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8 **BEFORE THE**
9 **MEDICAL BOARD OF CALIFORNIA**
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against,

Case No. 800-2018-049685

13 **JOSEPH BENNETT MICHELSON, M.D.**
14 **1515 N. San Antonio Avenue**
Upland, CA 91786-2273

**DEFAULT DECISION
AND ORDER**

15 **Physician's and Surgeon's Certificate No. G**
16 **27909**

[Gov. Code, §11520]

17 Respondent

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19 **FINDINGS OF FACT**

20 1. On or about February 20, 2019, Complainant Kimberly Kirchmeyer, in her official
21 capacity as the Executive Director of the Medical Board of California, Department of Consumer
22 Affairs, filed Accusation No. 800-2018-049685 against Joseph Bennett Michelson, M.D.
23 (Respondent) before the Medical Board of California.

24 2. On or about August 21, 1974, the Medical Board of California (Board) issued
25 Physician's and Surgeon's Certificate No. G 27909 to Respondent. The Physician's and Surgeon's
26 Certificate was in full force and effect at all times relevant to the charges brought herein and will
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1 expire on May 31, 2019, unless renewed. (Exhibit Packet, Exhibit 1¹ Certificate of Licensure.)

2 3. The Arizona Medical Board investigated Respondent Joseph Bennett Michelson,
3 M.D. after receiving a report from the Arizona Department of Health Services that Respondent
4 had "issued Medical Marijuana Certifications without querying the Controlled Substance
5 Prescription Monitoring Program . . . as required between July 1, 2017 and December 31, 2017."

6 4. On April 18, 2018, Respondent asked the Arizona Medical Board to allow him to
7 surrender his license to practice medicine in Arizona. The Arizona Medical Board consented to
8 the surrender and entered an Order for Surrender of License and Consent to the Same ("Order for
9 Surrender") with Respondent, effective October 23, 2018. The Order for Surrender is attached as
10 Exhibit Packet, Exhibit 2, Accusation, Related Documents, and Declaration of Service.) Among
11 the Conclusions of Law set forth in the Order for Surrender is the following: "The Board
12 possesses statutory authority to enter into a consent agreement with a physician and accept the
13 surrender of an active license from a physician who admits to being unable to safely engage in the
14 practice of medicine."

15 5. On or about February 20, 2019, an employee of the Board, served by Certified and
16 First Class Mail a copy of the Accusation No. 800-2018-049685, Statement to Respondent,
17 Notice of Defense, Request for Discovery, and Government Code sections 11507.5, 11507.6, and
18 11507.7 to Respondent's address of record with the Board, which was and is 1515 N. San Antonio
19 Avenue Upland, CA 91786-2273. (Exhibit Packet, Exhibit 2, Accusation, Related Documents,
20 and Declaration of Service.),

21 6. Service of the Accusation was effective as a matter of law under the provisions of
22 Government Code section 11505, subdivision (c).

23 7. On March 8, 2019, an employee of the Attorney General's Office served by Certified
24 and First Class mail addressed to the Respondent at 1515 N. San Antonio Avenue Upland, CA
25 91786-2273 a Courtesy Notice of Default. The Courtesy Notice of Default with a copy of the
26 Accusation and Notice of Defense advised Respondent that he was in default; that he should take

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28 ¹ The evidence in support of this Default and Order is submitted herewith as the "Exhibit
Packet."

1 immediate action and file a Notice of Defense; and cautioned him that a decision would be
2 rendered by the Board without hearing if he did not take action. (Exhibit Packet, Exhibit 3
3 Courtesy Notice of Default, Related Documents, and Declaration of Service.)

4 8. An employee of the Board received the returned envelope on February 28, 2019. The
5 Accusation and related documents were returned to the Board by the U.S. Postal Service marked
6 "Insufficient Address, Unable to Forward." (Exhibit Packet, Exhibit 4, Copy of Envelope
7 Returned by Post Office.)

8 STATUTORY AUTHORITY

9 9. Business and Professions Code section 118 states, in pertinent part:

10 "(b) The suspension, expiration, or forfeiture by operation of law of a license issued by a
11 board in the department, or its suspension, forfeiture, or cancellation by order of the board or by
12 order of a court of law, or its surrender without the written consent of the board, shall not, during
13 any period in which it may be renewed, restored, reissued, or reinstated, deprive the board of its
14 authority to institute or continue a disciplinary proceeding against the licensee upon any ground
15 provided by law or to enter an order suspending or revoking the license or otherwise taking
16 disciplinary action against the license on any such ground."

17 10. Government Code section 11506 states, in pertinent part:

18 "(c) The respondent shall be entitled to a hearing on the merits if the respondent files a
19 notice of defense, and the notice shall be deemed a specific denial of all parts of the accusation
20 not expressly admitted. Failure to file a notice of defense shall constitute a waiver of respondent's
21 right to a hearing, but the agency in its discretion may nevertheless grant a hearing."

22 11. The Board served the Respondent at Respondent's designated address of record.
23 Respondent failed to file a Notice of Defense within 15 days after service upon him of the
24 Accusation, and therefore waived his right to a hearing on the merits of Accusation No. 800-
25 2018-049685.

26 12. California Government Code section 11520 states, in pertinent part:
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1 "(a) If the respondent either fails to file a notice of defense or to appear at the hearing, the
2 agency may take action based upon the respondent's express admissions or upon other evidence
3 and affidavits may be used as evidence without any notice to respondent."

4 13. Section 2305 of the Code states:

5 "The revocation, suspension, or other discipline, restriction or limitation imposed by
6 another state upon a license or certificate to practice medicine issued by that state, or the
7 revocation, suspension, or restriction of the authority to practice medicine by any agency of the
8 federal government, that would have been grounds for discipline in California of a licensee under
9 this chapter [Chapter 5, the Medical Practice Act] shall constitute grounds for disciplinary action
10 for unprofessional conduct against the licensee in this state."

11 14. Section 141 of the Code states:

12 "(a) For any licensee holding a license issued by a board under the jurisdiction of the
13 department, a disciplinary action taken by another state, by any agency of the federal government,
14 or by another country for any act substantially related to the practice regulated by the California
15 license, may be a ground for disciplinary action by the respective state licensing board. A
16 certified copy of the record of the disciplinary action taken against the licensee by another state,
17 an agency of the federal government, or another country shall be conclusive evidence of the
18 events related therein.

19 "(b) Nothing in this section shall preclude a board from applying a specific statutory
20 provision in the licensing act administered by that board that provides for discipline based upon a
21 disciplinary action taken against the licensee by another state, an agency of the federal
22 government, or another country."

23 15. Pursuant to its authority under Government Code section 11520, the Board finds
24 Respondent is in default. The Board will take action without further hearing and, based on
25 Respondent's express admissions by way of default and the evidence before it, contained in the
26 Exhibit Packet, Exhibits 1, 2, 3 and 4, finds that the allegations in Accusation No. 800-2018-
27 049685 are true.

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1 **DETERMINATION OF ISSUES**

2 Pursuant to the foregoing findings of fact, Respondent's conduct, and the action of the
3 Arizona Medical Board, constitute cause for discipline within the meaning of Business and
4 Professions Code sections 2305 and 141 (a).

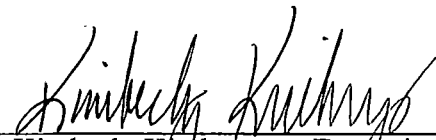
5 **ORDER**

6 IT IS SO ORDERED that Physician's and Surgeon's Certificate No. G 27909, heretofore
7 issued to Respondent Joseph Bennett Michelson, M.D., is **REVOKED**.

8 Pursuant to Government Code section 11520, subdivision (c), Respondent may serve a
9 written motion requesting that the Decision be vacated and stating the grounds relied on within
10 seven (7) days after service of the Decision on Respondent. The agency in its discretion may
11 vacate the Decision and grant a hearing on a showing of good cause, as defined in the statute.

12 This Decision shall become effective on May 30, 2019, at 5:00 p.m.

13 It is so ORDERED April 30, 2019

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16 Kimberly Kirchmeyer, Executive Director
17 FOR THE MEDICAL BOARD OF CALIFORNIA
18 DEPARTMENT OF CONSUMER AFFAIRS
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Attorneys for Complainant

FILED
STATE OF CALIFORNIA
MEDICAL BOARD OF CALIFORNIA
SACRAMENTO FEB 20 2019
BY: [Signature] ANALYST

7 BEFORE THE
8 MEDICAL BOARD OF CALIFORNIA
9 DEPARTMENT OF CONSUMER AFFAIRS
10 STATE OF CALIFORNIA

11 In the Matter of the Accusation Against:

Case No. 800-2018-049685

12 **Joseph Bennett Michelson, M.D.**
13 1515 N. San Antonio Avenue
14 Upland, CA 91786-2273

ACCUSATION

15 **Physician's and Surgeon's Certificate**
16 **No. G 27909,**

Respondent.

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19 Complainant alleges:

20 **PARTIES**

21 1. Kimberly Kirchmeyer (Complainant) brings this Accusation solely in her official
22 capacity as the Executive Director of the Medical Board of California, Department of Consumer
23 Affairs (Board).

24 2. On or about August 21, 1974, the Medical Board issued Physician's and Surgeon's
25 Certificate Number G 27909 to Joseph Bennett Michelson, M.D. (Respondent). The Physician's
26 and Surgeon's Certificate was in full force and effect at all times relevant to the charges brought
27 herein and will expire on May 31, 2019, unless renewed.

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JURISDICTION

3. This Accusation is brought before the Board, under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

4. Section 2004 provides that the Board shall have the responsibility for the enforcement of the disciplinary and criminal provisions of the Medical Practice Act.

5. Section 2227 provides that a licensee who is found guilty under the Medical Practice Act may have his or her license revoked, suspended for a period not to exceed one year, placed on probation and required to pay the costs of probation monitoring, or such other action taken in relation to discipline as the Board deems proper.

6. Section 2234 states:

The board shall take action against any licensee who is charged with unprofessional conduct. In addition to other provisions of this article, unprofessional conduct includes, but is not limited to, the following:

(a) Violating or attempting to violate, directly or indirectly, assisting in or abetting the violation of, or conspiring to violate any provision of this chapter.

7. Section 141 states:

(a) For any licensee holding a license issued by a board under the jurisdiction of the department, a disciplinary action taken by another state, by any agency of the federal government, or by another country for any act substantially related to the practice regulated by the California license, may be a ground for disciplinary action by the respective state licensing board. A certified copy of the record of the disciplinary action taken against the licensee by another state, an agency of the federal government, or another country shall be conclusive evidence of the events related therein.

(b) Nothing in this section shall preclude a board from applying a specific statutory provision in the licensing act administered by that board that provides for discipline based upon a disciplinary action taken against the licensee by another state, an agency of the federal government, or another country.

8. Section 2305 states:

The revocation, suspension, or other discipline, restriction, or limitation imposed by another state upon a license or certificate to practice medicine issued by that state, or the revocation, suspension, or restriction of the authority to practice medicine by any agency of the federal government, that would have been grounds for discipline in California of a licensee under this chapter, shall constitute grounds for disciplinary action for unprofessional conduct against the licensee in this state.

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1 3. Ordering Respondent, if placed on probation, to pay the Board the costs of probation
2 monitoring; and

3 4. Taking such other and further action as deemed necessary and proper.

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5 DATED:

6 February 20, 2019


KIMBERLY KIRCHMEYER
Executive Director
Medical Board of California
Department of Consumer Affairs
State of California
Complainant

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Exhibit A

1 **BEFORE THE ARIZONA MEDICAL BOARD**

2
3 In the Matter of

4 **JOSEPH B. MICHELSON, M.D**

5 Holder of License No. 54362
6 For the Practice of Medicine
 In the State of Arizona.

Case No. MD-18-0258A

**ORDER FOR SURRENDER
OF LICENSE AND CONSENT
TO THE SAME**

7 Joseph B. Michelson, M.D. ("Respondent"), elects to permanently waive any right to
8 a hearing and appeal with respect to this Order for Surrender of License; admits the
9 jurisdiction of the Arizona Medical Board ("Board") as well as the facts stated herein; and
10 consents to the entry of this Order by the Board.

11 **FINDINGS OF FACT**

12 1. The Board is the duly constituted authority for the regulation and control of
13 the practice of allopathic medicine in the State of Arizona.

14 2. Respondent is the holder of license number 54362 for the practice of
15 allopathic medicine in the State of Arizona.

16 3. The Board initiated case number MD-18-0258A after receiving a report from
17 the Arizona Department of Health Services ("AZDHS") that Respondent issued Medical
18 Marijuana Certifications ("MMC") without querying the Controlled Substance Prescription
19 Monitoring Program ("CSPMP") database as required between July 1, 2017 and
20 December 31, 2017.

21 4. Respondent failed to query the CSPMP database during the time period at
22 issue and stated that he did not fully understand the requirements of Arizona law regarding
23 issuance of MMCs.

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5. On April 18, 2018, Respondent reported to the Board that he ~~had retired~~ from the practice of medicine due to a health condition, and requested surrender of his license.

CONCLUSIONS OF LAW

1. The Board possesses jurisdiction over the subject matter hereof and over Respondent.

2. The Board possesses statutory authority to enter into a consent agreement with a physician and accept the surrender of an active license from a physician who admits to being unable to safely engage in the practice of medicine. A.R.S. § 32-1451(T)(1).

ORDER

IT IS HEREBY ORDERED THAT Respondent immediately surrender License Number 54362, issued to Joseph B. Michelson, M.D., for the practice of allopathic medicine in the State of Arizona, and return his certificate of licensure to the Board.

DATED and effective this 23rd day of October, 2018.

ARIZONA MEDICAL BOARD

By:

Patricia E. McSorley
Executive Director

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6. Upon signing this agreement, and returning this document (or a copy hereof) to the Board's Executive Director, Respondent may not revoke the consent to the entry of the Order. Respondent may not make any modifications to the document. Any modifications to this original document are ineffective and void unless mutually approved by the parties.

7. This Order is a public record that will be publicly disseminated as a formal disciplinary action of the Board and will be reported to the National Practitioner's Data Bank and on the Board's web site as a disciplinary action.

8. If the Board does not adopt this Order, Respondent will not assert as a defense that the Board's consideration of the Order constitutes bias, prejudice, prejudgment or other similar defense.

9. Respondent has read and understands the terms of this agreement.

JOSEPH B. MICHELSON, M.D.

Dated: 10/4/2018

EXECUTED COPY of the foregoing mailed by
US Mail this 23rd day of October, 2018 to:

Joseph B. Michelson, M.D.
Address of Record

Stephen W. Myers, Esq.
Mitchell Stein-Carey
One Renaissance Square
2 North Central Avenue, Suite 1450
Phoenix, Arizona 85004
Attorney for Respondent

ORIGINAL of the foregoing filed this
23rd day of October, 2018 with:

The Arizona Medical Board
1740 West Adams, Suite 4000
Phoenix, Arizona 85007

Mary Baker
Board staff